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NSC FOR SENIOR AFRICA DIRECTOR C. COURVILLE

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SUBJECT: ZIMBABWE'S INTERIM REPORT CARD ON IMPLEMENTATION
OF SADC ELECTION GUIDELINES

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Classified By: Ambassador Christopher W. Dell under Section 1.4 b/d

¶1. (C) SUMMARY: With just over four weeks to go before the nation's parliamentary elections, the GOZ continues to implement measures to further its case that it is complying with SADC election principles and guidelines. Many of the measures have been superficial or incompletely implemented. That said, most observers here agree that the pre-election environment has improved considerably over the run-ups to the parliamentary election of 2000 or the presidential election of 2002. This cable provides a brief status report on measures taken or being taken under each of the principal SADC guidelines. END SUMMARY.

Full Participation of Citizens in Political Process (Sections 2.1.1 and 7.4)

¶2. (SBU) The new electoral law (refs B and C) has not led to improvements in this area. It imposes greater restrictions on the posting of campaign material and several MDC activists reportedly have been arrested (and quickly released) in connection with posting activities. The opposition also reported at least three incidents in February in which ruling party supporters assaulted MDC activists for posting or distributing MDC campaign material; police have not taken action in any of the instances. Local ZANU-PF elements in some areas are reportedly disrupting MDC door-to-door canvassing activities, as well. The Public Order and Security Act (POSA) proscribes public criticism of the President and at least four individuals reportedly have been arrested during the past six months under this provision. All were quickly released, in some cases after payment of a nominal fine. The opposition reportedly is not permitted to hold meetings or campaign in military or police installations while the ruling party is afforded easy access to such facilities.

¶3. (SBU) In spite of legal and police restrictions, in practice there appears to be more room for political participation than during previous national elections. Opposition and civil society contacts have told us that the conspicuous presence and activities of pro-ZANU-PF youth militia that pervaded the countryside in 2000 and 2002 so far are lacking. An NGO representative advised that even in remote areas, "pungwes" (long political indoctrination sessions, complete with beatings, which many local communities were forced to attend - sometimes for days) that were common in the run-up to past elections are completely absent. Political persuasion efforts now revolved more around promise of benefits than threats, although residual fear of violence remained considerable in many areas. Opposition supporters were wearing MDC t-shirts in areas where they previously could not do so without risking assault by ruling party supporters.

Freedom of Association (Sections 2.1.2 and 7.4)

¶4. (SBU) Most opposition contacts report that MDC members nationwide generally enjoy more latitude to assemble than in past elections. Police have been more liberal in their application of POSA and have permitted campaign rallies and activities in all ten provinces, in contrast to a much more restrictive environment during the past two national elections. Police still selectively apply POSA, which requires notification of meetings to the police, strictly against the MDC, whereas ZANU-PF in practice can conduct meetings without regard to POSA requirements. MDC meetings generally are monitored by police and closed down if they go outside the terms of the POSA notification/approval. (Note: By its terms, POSA only requires that authorities be given prior notification of meetings, but in practice, the police assert authority to ban, reschedule, or relocate meetings. End note.) Some local opposition activists allege that certain local areas remain "no-go" areas by virtue of selective police use of POSA or intimidation by local ruling

party supporters.

Political Tolerance (Section 2.1.3)

15. (SBU) By most measures, levels of political tolerance have improved markedly compared to 2000 and 2002. Cases of politically motivated murder dropped from 48 in 2001 (the last full year before a national election) to three in 2004, while cases of torture dropped from 2245 in 2001 to 170 during the first 11 months of 2004 (latest statistics available). The dramatic drops -- more than 90 percent in each category -- follow nearly daily calls for tolerance and non-violence by GOZ and ruling party leaders publicly and privately over the past few months. The publicity campaign represents a stark contrast to ruling party campaigns during the past two national elections, in which many leaders publicly called for forceful suppression of opposition activities and, in some cases, were personally involved in violence against MDC members.

16. (C) Anecdotal reports of violence during the past two weeks are on the upswing compared to previous weeks, but the month of February was still considerably less violent than analogous periods preceding the last two national elections. Opposition figures report that local ruling party structures, recognizing their vulnerability without resort to violence, are pushing leaders to permit them greater latitude in resorting to violence. However, these same figures believe it is too late for the regime to affect the election's outcome by turning to violence at this point. For now, though, the leadership is sticking to public and private pleas for tolerance, and NGO contacts tell us that prominent leaders have warned local structures about political backlash against ruling party violence. We have heard of numerous instances in which the police have warned local leaders of each party that the police will take action against perpetrators of violence, regardless of political affiliation.

Equal Access to State Media (Sections 2.1.5 and 7.4)

17. (C) The GOZ recently promulgated regulations providing for access by all political parties to state media. MDC spokesperson Paul Themba-Nyathi told the Embassy on March 1 that the party had bought 91 minutes of radio time and 91 minutes of TV time and was scheduled to air its first ad the evening of March 1. In the meantime, state TV and radio covered the MDC campaign launch, including the airing of several minutes of a speech by MDC President Morgan Tsvangirai, and has covered statements by various MDC

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candidates. This marked much better coverage than in past election campaigns and MDC and civil society sources claim that it had a major effect on the electorate, galvanizing MDC supporters who had previously been apathetic. The coverage was still considerably less than state coverage of the ruling party, which received hours of live coverage of the ZANU-PF campaign launch, including a long speech by President Mugabe. State broadcast and print media have significantly lowered the level of vitriol directed against the opposition in its news and editorial policy since the eclipse of Information Minister Jonathan Moyo over the past few months.

Equal Opportunity to Vote and be Voted For (Sections 2.1.6 and 7.5)

18. (SBU) The exclusion the millions of Zimbabweans in the diaspora from voting remains a prominent complaint from the opposition and civil society and a serious electoral flaw. The constitution provides for universal suffrage for citizens but commits details to an election law. The recently enacted election law bars absentee voting by those outside the country except for diplomats and members of the armed services. A citizens' group filed an urgent application to the Supreme Court on February 24 to compel the GOZ to implement mechanisms to permit diaspora voting and the court has reserved judgment. The Supreme Court found legislative bars to diaspora voting in the last election to be unconstitutional in February 2002, but by executive decree under the Presidential Powers Act, the GOZ effectively kept the diaspora from voting.

19. (SBU) Recent delimitation of constituencies resulted in the elimination of three MDC seats and creation of three new seats in areas of ruling party dominance. Although population shifts would not seem to support this result, it remains unclear whether the delimitation exercise, which has been criticized bitterly by the opposition, actually violates constitutional provisions governing delimitation.

¶10. (SBU) Non-transparency and manipulation of voter rolls has underlain the rigging of past elections and, according to the opposition, the state of the rolls remains a major concern. It charges that some voters have been arbitrarily removed from the rolls, which at the same time include names of the deceased or of citizens who are not resident. Embassy FSNs who examined voter rolls in their precincts reported nothing untoward: they were afforded access on request, found their names, and said they were relatively impressed by the state of organization and automation at the inspection venue.

However, the rolls are only available for manual inspection, which undermines confidence in their integrity. Withholding electronic copies is contrary to the recommendations of the relevant parliamentary portfolio committee on the election law, which recommended that the Registrar General make a national electronic copy available to the opposition, allowing for a more systematic examination and analysis.

Election Institution Impartiality and Judicial Independence
(Sections 2.1.7 and 7.3)

¶11. (C) The GOZ consulted extensively with the MDC over the appointment of the new Zimbabwe Election Commission (ZEC). The opposition publicly expressed reservations about the ZEC Chairman but accepted all of the five Commission member's appointments. Privately, MDC members advise that a majority of the Commission can be counted on to be impartial and reliable. The Electoral Commission Law provides that a commissioner can only be removed for cause. More problematic than the Commission's identity and tenure are potential resource constraints and the Commission's overlapping authority with other election-related institutions. Still lacking a functioning office and secretariat, the Commission must coordinate with the constitutionally mandated but largely toothless Election Supervisory Commission, and the constitutionally mandated and historically GOZ-aligned Registrar General. The ESC and Registrar General are staffed largely by civil servants and retired security force personnel whose impartiality in many cases is doubtful. The ruling party had wanted to consolidate these overlapping authorities before the election but, lacking the constitutional authority to do so, created a nominally more independent ZEC in part to address its SADC electoral obligations. Whether the confusing array of institutions represents an improvement over prior elections remains to be seen.

¶12. Supreme Court Chief Justice Godfrey Chidyausiku in February named three High Court justices to serve as an ad hoc electoral court, a measure publicly welcomed by the opposition. The new court is designed to deal with election-related complaints expeditiously, within six months at the most. Most election-related complaints associated with the election five years ago were decided in favor of the opposition but remain under appeal or, in some cases of final orders, were never enforced. The new panel remains untested so far, and it remains to be seen whether it will be capable of administering justice more speedily or effectively. Zimbabwean courts continue to be somewhat politicized or disinclined to reach politically sensitive decisions, although pockets of competence and integrity remain. For its part, the GOZ has shown that it is prepared simply to ignore unfavorable decisions.

Voter Education (Section 2.1.8)

¶13. (C) The new electoral law requires that voter education conducted by civil society be approved by the ZEC and conducted without foreign funds (political parties are not constrained in their voter education efforts). We are unaware of instances in which this provision has been enforced, however, and civil society groups continue to conduct voter education activities gingerly, even as ruling party supporters have impeded some opposition party activities involving voter education. However, NGOs involved in voter education appear to have reduced their profiles in recent months, probably in response to the electoral law strictures and out of fear that the GOZ may target them under the provisions of the as yet unsigned NGO bill. The USAID-funded Zimbabwe Election Support Network, for example, has put out radio, print, and billboard ads on voter education, but has discontinued its voter education workshops pending explicit approval from the ZEC.

Prevention of Rigging/Fraud (Section 7.5)

¶14. (SBU) The new electoral act incorporated several of the measures recommended by the opposition to reduce fraud, e.g., use of translucent voting boxes, one-day voting, vote-counting at the polling station. Opposition members,

however, now complain that the ruling party is manipulating the new measures. They allege, for instance, that local ruling party elements have tried to convince some voters that the translucent boxes will permit government officials to know how people voted, or that local vote-counting will permit them to know how the individual community voted, with attendant adverse consequences for the community. Opposition sources have also complained that one-day may not be enough time for all Zimbabweans to vote, especially those in urban MDC strongholds where the number of polling places may be deliberately insufficient.

Security for Participants (Section 7.7)

¶15. (C) Morgan Tsvangirai told the Ambassador last month that the MDC had used the Police Commissioner's national pledge to crack down on all political violence to considerable effect in engaging local police. The arrest of some ZANU-PF supporters on assault-related charges and wide police consultation with the MDC certainly mark departures from earlier practice, but police continue to be reticent in many cases to take action against ZANU-PF-initiated violence, reduced as it may be.

Other

¶16. (SBU) It is premature to judge the GOZ's efforts in meeting several other SADC electoral guidelines, such as the adequacy of logistics (Section 7.6) and transparency of the voting process/access for party and candidate representatives (Section 7.8). GOZ invitations for a SADC observation mission only went out in February, in clear violation of the 90-day advance notice required under Section 7.10. The GOZ reportedly blocked an earlier visit by a SADC technical team of lawyers assigned to examine the legal infrastructure to support the election.

Comment

¶17. (C) Dramatic reductions in violence and opposition access to national broadcast media are significant improvements over past elections. We believe that international scrutiny, coupled with Mugabe's desire to claim renewed legitimacy based on the elections, have contributed to the improved climate. A key issue is whether Mugabe miscalculated and, by offering the opposition a space, has enabled the MDC to capitalize on the more relaxed conditions to an extent unimaginable just months ago. On the other side, the ruling party continues to use its considerable systemic advantages to bolster its own election prospects and is building from a position of strength resulting from years of intimidation and intense polarization. At this juncture, while it is clear that the GOZ's legal framework has created an "un-level playing field" from the outset, the real test will be political -- a statement that would hardly have seemed possible even three months ago.

SCHULTZ